

The United States–Mexico–Canada Agreement: Overview and Analysis

David A. Gantz, J.D., J.S.M., Will Clayton Fellow in Trade and International Economics, Mexico Center



INTRODUCTION

If the United States–Mexico–Canada Agreement (USMCA) is ultimately approved by the three parties and enters into force, this modified and modernized version of NAFTA¹ will continue to govern most economic relationships in North America, including nearly \$1.2 trillion in annual trade of goods and services, for at least 16 years. The USMCA preserves the bulk of the NAFTA structures that permit North American manufacturers to compete effectively with their counterparts in Europe and Asia in North American and foreign markets. The most likely alternative—termination of NAFTA by the Trump administration—would have been far worse for the three economies and might have created a constitutional crisis in the United States between the president and Congress. The chilling effect on investment and new hiring generated by almost two years of uncertainty over NAFTA’s future will also be resolved once the USMCA goes into force, perhaps as soon as January 1, 2020.

Those in Canada and Mexico who rightly viewed the negotiations first and foremost as a damage-limiting exercise can take comfort that in the case of Canada, the NAFTA cultural industries exception was preserved, the trade dispute settlement mechanism survived, and Canada was required to reduce its restrictions on milk product imports and

accept higher pharmaceutical prices to only a limited degree. For Mexico, despite attacks on its auto industry, under the new rules the industry will probably survive mostly intact and may actually expand (see below); labor obligations permitting independent unions will assist Mexico’s new president, Andrés Manuel López Obrador, in increasing Mexican wages and reducing inequality; and most other industrial and agricultural sectors will be relatively unaffected. Most significantly, both Mexico and Canada preserve their access to the U.S. market, on which more than 75% of their exports depends.

Given that NAFTA was negotiated in 1991–92, it is obvious that many changes have occurred affecting regional and global trade in the ensuing 25 years. The USMCA consists of 34 chapters compared to 22 in NAFTA, plus numerous annexes and side letters.² The new subject matter includes small and medium-sized enterprises, state-owned enterprises, corruption, e-commerce, data localization, and general regulatory practices, some of which may set the standard for future trade agreements concluded by the three parties. Significant economic or political changes to NAFTA include rules governing the automotive trade, dispute settlement, intellectual property, and agriculture.

As with NAFTA, compliance with USMCA rules will create significant administrative burdens for enterprises in all three countries,

The USMCA preserves the bulk of the NAFTA structures that permit North American manufacturers to compete effectively with their counterparts in Europe and Asia in North American and foreign markets.

Democrats in the House may, as a condition of supporting the agreement, demand changes in the text, most likely to strengthen the enforcement of the labor and environmental provisions (which are already considerably more robust than those in the NAFTA “side” agreements).

particularly for the automotive and textile industries and for small and medium-sized enterprises. Whether the USMCA will result in measurable increases in manufacturing employment in the United States or a reduction in the trade deficit remains to be seen.

Eventual congressional approval of the agreement under the Trade Promotion Authority (TPA) is likely, in my view, despite the Democratic Party’s control of the U.S. House of Representatives, but House consideration of the USMCA could be delayed because of more pressing items on the Democratic agenda (such as special counsel Robert Mueller’s status, immigration, the border “wall,” healthcare, or investigations). Also, Democrats in the House may, as a condition of supporting the agreement, demand changes in the text (or perhaps in the U.S. implementing legislation), most likely to strengthen the enforcement of the labor and environmental provisions (which are already considerably more robust than those in the NAFTA “side” agreements). This conditional support by key Democrats last occurred in 2011, when the new Republican House majority and some Democrats supported the passage of free trade agreements (FTAs) with Colombia, Panama, and South Korea (five years after their conclusion by George W. Bush’s administration) only after the Obama administration reopened negotiations with those countries to make changes demanded by industry and labor groups. Also, Trump’s renewed threat to terminate NAFTA as a means of convincing Congress to pass the USMCA could, if implemented, backfire by strengthening Congressional opposition, particularly among Democrats. Still, if used judiciously it might help to avoid extended delays in congressional action once the agreement is formally sent to Congress.³

This report provides an introduction and overview to the USMCA, focusing on the most significant changes. The discussion is divided into three major sections, addressing positive and negative changes, and a few key areas where Canada and Mexico

prevailed against U.S. pressures, forcing the United States to compromise. These divisions are mine and do not necessarily reflect those of other observers. Subsequent reports in this series will explore major features of the USMCA in much greater detail, including questions relating to its ultimate approval by Congress.

POSITIVE CHANGES IN THE USMCA COMPARED TO NAFTA

While there has been much, often justified, criticism of the USMCA as a retreat from open regional trade, particularly in the automotive sector and (in my view) the area of dispute settlement,⁴ this does not change the fact that the twenty-five-year-old NAFTA was badly in need of modernization to deal with many new areas, such as data and e-commerce, and improve coverage of areas such as labor, the environment, and small and medium-sized enterprises.

Modernization of NAFTA

The USMCA updates or adds to NAFTA (and to later U.S. FTAs): coverage of customs and customs procedures, state-owned enterprises, competition policy, small and medium-sized enterprises, corruption, good regulatory practices, technical barriers to trade, sanitary and phytosanitary standards, and various industry-specific standards.⁵ The most important modernizations for American businesses, particularly financial institutions and high-tech enterprises, are probably those that prohibit localization requirements for data storage and that govern e-commerce.⁶ For North American business and labor, the most significant benefit of the USMCA is that it continues NAFTA in a manner that will largely preserve the competitiveness of North American supply chains, intraregional trade, and high-level manufacturing, innovation, and services with major competitors, China and the European Union.

Many of the USMCA innovations reflect the Trans-Pacific Partnership (TPP) text that the Obama administration concluded (along with Canada and Mexico) that was rejected in January 2018 by the Trump

administration.⁷ A major objective of the TPP, which will enter into force in modified form as the “Comprehensive and Progressive TPP” (CPTPP) on January 1, 2019, for most of the remaining eleven parties,⁸ was to set new standards for future trade agreements worldwide. The incorporation of many TPP provisions in the USMCA suggests that some Trump administration officials are mindful of the desirable precedential effects of incorporating provisions developed in regional trade agreements.

Enhanced Labor and Environmental Protections

Improved protections for labor and the environment have been incorporated in every free trade agreement concluded by the United State since NAFTA, beginning in 2003 with the agreements with Australia, Chile, and Singapore.⁹ The principal objective of NAFTA critics during this period was to ensure that future FTAs would incorporate labor and environmental protections in the body of the agreement, rather than in supplemental agreements as with the NAFTA “side” agreements, so as to ensure that violation of those provisions would be subject to the same dispute settlement mechanism and trade sanctions as violations of the trade obligations. However, due to the intransigence the Bush administration, this was not achieved until a group of late Bush administration agreements with Colombia, Panama, Peru, and South Korea were amended at the demand of the Democratic Congress in 2007.¹⁰

The USMCA labor provisions focus on supporting independent unions in Mexico on the assumption that more effective unions will mean higher wages and greater purchasing power for Mexican workers.¹¹ One addition, presumably added at the initiative of Canada, requires the implementation of policies against “employment discrimination on the basis of sex, including with regard to pregnancy, sexual harassment, sexual orientation, gender identity, and caregiving responsibilities.”¹² The sexual orientation and gender identity requirements have created opposition among some conservative Republican members of Congress, resulting

in the addition of a footnote that effectively (if awkwardly) makes these requirements inapplicable to the United States.¹³

The environmental provisions draw heavily on the TPP environmental chapter, which addresses conservation in such areas as fisheries subsidies, shark finning, invasive species, and cooperation on marine litter and air quality.¹⁴ Importantly, a side agreement on environmental cooperation preserves the Commission for Environmental Cooperation created under NAFTA’s North American Agreement on Environmental Cooperation.¹⁵

Currency Manipulation

For the first time in a trade agreement, the USMCA incorporates measures to guard against currency manipulation.¹⁶ While the importance of incorporating such safeguards in the USMCA is limited given that neither Canada nor Mexico have been accused of currency manipulation in the past, the U.S. negotiators—very wisely in my view—saw the USMCA negotiations as an opportunity to develop language that could be incorporated in future trade agreements, such as those contemplated with the European Union, Japan, and the United Kingdom.¹⁷ The relatively limited reach of the provisions likely reflects the reluctance of the U.S. Department of Treasury to address currency issues in trade agreements.

Agriculture

Press reports on the negotiations between Canada and the United States suggest that the most difficult issues to resolve were Canada’s insistence on maintaining the NAFTA dispute settlement mechanism for reviewing unfair trade practice actions (see below), and U.S. demands for improved access to the Canadian dairy market. The United States achieved a modest opening for milk solids exports, comprising about 3.6% of the Canadian market.¹⁸ In addition, cheese exporters to Mexico preserved a lucrative export market for their branded products, including protection against EU efforts in a pending trade agreement with Mexico to limit the usage of certain product names to EU suppliers.¹⁹ More importantly, the United States, Mexico, and Canada preserve a vibrant, mutually beneficial series of trade

For North American business and labor, the most significant benefit of the USMCA is that it continues NAFTA in a manner that will largely preserve the competitiveness of North American supply chains, intraregional trade, and high-level manufacturing, innovation, and services with major competitors, China and the European Union.

The most controversial area of the USMCA negotiations was the auto and auto parts sector.

relationships. American farmers and food processors will continue to enjoy access to their first (Canada) and third (Mexico) largest export markets.²⁰ Mexico was also successful in preserving access to the U.S. market for winter fruits and vegetables, defeating a Trump administration demand for new trade remedies that could have diminished such access.²¹ Today, the principal threat to North American agricultural trade is in Canadian and Mexican retaliation for U.S. tariffs on imported steel and aluminum, which has caused U.S. agricultural exports to both markets to decline since June 2018.²²

THE DOWNSIDES OF THE USMCA

As indicated above, it is likely that the areas that have been most severely criticized in the USMCA, the automotive rules of origin and rules about dispute settlement, have overshadowed the positive aspects of the agreement. Still, these two areas are not the only ones that represent steps backward in the long evolution of U.S. FTAs since NAFTA.

Automotive Rules of Origin and Related Restrictions

The most controversial area of the USMCA negotiations was the auto and auto parts sector. The United States initially made a series of harsh demands, including raising the total North American content requirements from 62.5% to 85%, of which 50% would have had to have been U.S. content.²³ These were not surprisingly rejected out of hand by Mexico and Canada. Compromises were ultimately reached in the negotiations between the United States and Mexico that took place in July and August 2018, although the U.S. continued to focus on increasing U.S. content, indirectly if not directly.

Most of the changes will be phased in over a three-year period beginning with the implementation of the USMCA. First, the North American “regional value content” required for NAFTA was raised from 62.5% to 75%.²⁴ Second, 70% of the steel and aluminum used in auto production must come from North American sources. Third, 40% of the product value of autos and

45% of trucks must be made in facilities where workers are paid at least \$16 per hour, meaning that except for research and development and some engineering, only facilities located in the United States or Canada would qualify.

For Canada, the \$16 per hour requirement is no more a bar than in the United States, given the similar wage costs in Canada. For Mexico, it is a much more serious challenge since typical auto industry wages in Mexico are approximately \$3.60–\$3.90 per hour (attributable by some studies in part to lack of union support for workers).²⁵ This means that most of that 40% to 45% of auto content must be produced in the United States or Canada. Still, some high-wage Mexican employees, such as engineering, research and development, and management personnel, are paid up to \$22 per hour and may be counted toward the total, perhaps encouraging auto manufacturers to undertake more research and development in Mexico.²⁶ Mexican officials estimate that about 70% of Mexican auto production already would meet the 75% regional value content requirements.²⁷ Those vehicles that do not qualify for the USMCA rules of origin would be eligible for the current most-favored nation (MFN) duty of 2.5%, if the applied MFN rate remains the same. This is also true for the MFN rates on auto parts.

Vehicles that would have met the NAFTA rules of origin but not the USMCA rules would continue to benefit from the current MFN duties, but only up to 1.6 million vehicles per year.²⁸ Such imports would be feasible for autos at the 2.5% MFN tariff but not for small trucks, where the U.S. tariff is 25%. The USMCA side letters effectively establish a tariff-rate quota for both Mexican and Canadian vehicles if the United States imposes “national security” tariffs on autos and auto parts. Under the USMCA, 2.6 million passenger vehicles per year and a quantity of auto parts (\$32.4 billion from Canada and \$108 billion from Mexico), as well as light trucks from both countries, would be excluded from the “national security” measures if applied elsewhere.²⁹ All such volumes are well above current Canadian and Mexican exports to the United States.

Most of the changes will be phased in over a three-year period beginning with the implementation of the USMCA.

Tracing the parts and components produced in facilities paying \$16 per hour or more will likely be a significant administrative burden for auto and auto parts producers, as would the costs of new facilities that are established only because of the \$16 per hour requirements, for example replacing factories in Mexico with new facilities in the United States. However, changes in the rules that set specific regional value content for certain major components may modestly reduce administrative costs attributed to the complex trading requirements under NAFTA.³⁰

The net impact of the stiffer rules of origin on North American vehicle production and employment is difficult to predict. It is likely that a higher percentage of vehicle and parts production for the U.S. market will occur in the United States, but if prices increase as many expect, the total number of vehicles sold in North America may decrease. It is also likely that U.S.–made vehicles that are currently exported to other countries such as China will be exported in smaller numbers because the increased costs will lead to higher prices and reduced competitiveness. Thus, the Trump administration’s objective of increasing U.S. auto industry employment and decreasing the trade deficit with Mexico may not ultimately be realized, even if the effects of greater automation (to offset some of the higher wage costs) are ignored.

Reduced Investor Protections

Specified rights for foreign investors and investor–state dispute settlement (ISDS) have been included in NAFTA (Chapter 11) and all subsequent U.S. FTAs except the agreement with Australia.³¹ Similar ISDS provisions are found in several thousand bilateral investment treaties, including more than 40 concluded by the United States.³² However, such protection is not favored by the Trump administration, whose officials believe that ISDS provisions violate U.S. sovereignty and may encourage American enterprises to move facilities to lower–wage countries such as Mexico.³³

Chapter 14 of the USMCA, except for “legacy” claims under NAFTA Chapter 11 (which would survive for a period of three

years),³⁴ significantly reduces the protection for most investors in Mexico, primarily by depriving them of the right to pursue actions against the Mexican government in ISDS for denial of “fair and equitable treatment” or indirect expropriation.³⁵ In addition, the new provisions do not apply to establishment claims (prior to the actual investment), and they impose a 30–month period for exhaustion of local remedies before international arbitration can be sought.³⁶

The full ISDS protections, including the frequently cited denial of fair and equitable treatment and indirect expropriation, remain only for investors in Mexico that have concluded contracts with the government or government entities in oil and gas, infrastructure projects, power generation, transportation, and telecommunications.³⁷ Given the importance for Mexico in attracting foreign investment to the hydrocarbons sector, the preservation of ISDS for that sector will probably afford potential investors a greater level of confidence when they invest in long–term projects. For investors in the relatively unprotected sectors, questions arise as to whether there will be a substantial impact on investment levels, given the relatively few ISDS actions (less than 20 in 25 years) against Mexico.

The situation with Canada is different; ISDS claims will not be permitted at all between the United States and Canada after the legacy period.³⁸ Disputes between Canadian investors and the Mexican government and vice–versa would be covered by the CPTPP once it enters into force, presumably January 1, 2019.³⁹ With Canada, which has the dubious honor of being the most frequent NAFTA respondent, one may speculate that many government lawyers and other officials are wary of defending ISDS cases in a country where the national courts have a well–deserved reputation for competence and independence.

Hydrocarbon Sector Investment in Mexico

Many, if not all, trade agreements are subject to retrospective criticism about what was not accomplished. NAFTA was criticized for permitting Mexico to retain its long–time

With Canada, which has the dubious honor of being the most frequent NAFTA respondent, one may speculate that many government lawyers and other officials are wary of defending ISDS cases in a country where the national courts have a well–deserved reputation for competence and independence.

Sixteen years is long enough to cover the useful lives of most investment outside the extractive industries and should have relatively little impact on investment decisions in North America.

government monopoly over hydrocarbons and electric power generation.⁴⁰ Some observers had hoped that the USMCA would instead guarantee the same opportunities for private foreign investors in those sectors as are provided by Mexico's 2013 legal and constitutional reforms.⁴¹ Key elements of the reforms overwhelmingly approved by Mexico's congress included procedures to permit and govern investment in service and other profit-sharing contracts in hydrocarbon development, as well as in refining, transport, storage, natural gas processing, and petrochemical sectors.⁴²

However, while the USMCA explicitly preserves Mexico's sovereignty to modify its constitution and domestic legislation, Mexico is legally bound by the 2013 energy reforms through a rather circuitous route that effectively incorporates by reference the Mexican TPP reservations, preserving those reforms into the USMCA.⁴³ Assuming that this language were to be faithfully enforced by arbitrators in a proceeding under USMCA's ISDS or state-to-state dispute settlement provisions, it would effectively preclude a rollback of the 2013 laws.

Sixteen-year Sunset Clause

The USMCA's sunset clause⁴⁴ is the process calling for a review six years after the agreement enters into force, with termination ten years thereafter if there is no agreement on extending it. The best thing that can be said about this clause is that it is far better than the original U.S. government proposal, which was a five-year sunset provision. Such a short period of time would have resulted in great uncertainty for investors in all three countries—probably the reason the Trump administration proposed it in the first place—and it was roundly criticized by all stakeholders. Sixteen years is long enough to cover the useful lives of most investment outside the extractive industries and should have relatively little impact on investment decisions in North America.

Ten-year Term for Biologic Drug Protection Will Drive up Costs in Mexico and Canada

While the United States was unable to negotiate a ten-year period for biologic drug patent protection in the TPP (effectively eight years),⁴⁵ Canada and Mexico both agreed on ten years in the USMCA.⁴⁶ Other intellectual property sections of the USMCA are very similar to those in the TPP, providing for enhanced protection against generic producers of agricultural chemicals and pharmaceutical products.⁴⁷ While U.S. law provides for a twelve-year term, such lengthy protection is generally opposed elsewhere, including in Canada and Mexico, because it increases the costs of such drugs, most of which accrue to national government healthcare systems.

Prohibition of Mexico or Canada from Concluding an FTA with a Nonmarket Economy (e.g., China)

Another unique provision apparently insisted upon by the Trump administration is designed to give the United States the option of withdrawing from the USMCA with six months' notice if either Canada or Mexico were to negotiate a trade agreement with a nonmarket economy (NME).⁴⁸ However, any country with a free trade agreement at the time of signing the USMCA is excluded. Thus Vietnam, which is a party to the existing CPTPP along with Canada and Mexico, is excluded from the prohibition.

Steel and Aluminum Tariffs

The U.S. section 232 tariffs, which are independent of both NAFTA and the USMCA, have resulted in the imposition of "national security" tariffs on steel and aluminum imported from most countries. These tariffs will remain in place under the USMCA as of early December 2018, as will the Canadian and Mexican retaliatory tariffs mentioned earlier. Before the tariffs, Canada was the largest source of both steel and aluminum imports into the United States, and Mexico was fourth largest in terms of steel imports.⁴⁹ Given that possible future U.S. national security tariffs on autos and auto parts are addressed in the two USMCA side letters mentioned earlier, it is surprising to some observers that these steel and

aluminum tariffs have not been addressed. They will likely remain a major problem in U.S.–Canada and U.S.–Mexico relations unless they are removed or some sort of settlement is reached.

PRESERVING OTHER KEY ASPECTS OF NAFTA

The fact that the USMCA carried over the bulk of NAFTA was undoubtedly critical to obtaining Canada’s last-minute inclusion in the agreement. In addition to the general preservation of the duty-free, tariff-free trade established under NAFTA, as well as very limited changes to the NAFTA rules of origin that NAFTA stakeholders have learned to live with over the past twenty-five years, several specific areas of NAFTA that were retained in the USMCA are notable.

Review of Dumping and Subsidies Trade Determinations

Despite strong initial Trump administration opposition, the NAFTA mechanism (Chapter 19) for reviewing dumping or illegal subsidization by binational panels instead of domestic federal courts was preserved without significant changes.⁵⁰ While the September 30 draft of the USMCA initially applied the mechanism only between the United States and Canada, with Mexico having agreed to its elimination, the USMCA was soon revised to expand the mechanism to Mexico as well. For Canada, Chapter 19 was a red line, given that it was material—the “crown jewel” with “iconic significance”—in Canadian approval of the 1988 U.S.–Canada Free Trade Agreement, as well as NAFTA five years later.⁵¹

Canadian Cultural Industries Exception

The other redline issue was Canada’s “cultural industries” exception, which was also incorporated in the United States–Canada FTA, NAFTA, and now into the USMCA.⁵² The exception, which applies only to Canada, reflects long-standing Canadian concerns “of having its indigenous cultural expression drowned in a flood of U.S. films, television programs, sound recordings, books, and magazines.”⁵³ Given that most

of Canada’s citizens live within 100 miles of the U.S. border and some 94% of films and 75% of TV programs shown in Canada originate in the United States as of 2010, these concerns do not seem unreasonable if exercised responsibly, even if restrictions on such media would otherwise technically violate free trade principles.

State-to-state Dispute Settlement

Another area of strong interest to Canada and Mexico given the enormous disparities between the size of their economies and the United States, as well as their dependence on the United States as their major export market, was the preservation of a strong state-to-state dispute settlement mechanism. This aspect of NAFTA was targeted for curtailment by the United States, which had proposed making compliance with dispute settlement panel rulings voluntary.⁵⁴ Canada and Mexico ultimately prevailed, and the NAFTA provisions were carried over to the USMCA with minimal changes.⁵⁵ While the NAFTA mechanism has proved susceptible to long delays by any party that refused to cooperate in appointing panelists, even an imperfect system was likely even more necessary in the USMCA given that the United States seems intent on emasculating the binding dispute settlement mechanism in the World Trade Organization (WTO).⁵⁶

Government Procurement

The United States also attacked NAFTA’s government procurement provisions during the negotiations. Initially, the United States demanded that government procurement be reciprocal on a dollar-for-dollar basis, i.e., Canadian and Mexican enterprises would benefit from sales to U.S. government entities only to the extent that the Canadian and Mexican governments made purchases from U.S. enterprises.⁵⁷ This approach was impractical given that the U.S. economy and population are many times the size of the other economies. The risks for Canada were not severe given that both the United States and Canada are parties to the WTO’s government procurement agreement, but Mexico is not. The USMCA provisions make minor changes, but in general the NAFTA provisions are carried over.⁵⁸

Still, if the major threat to the U.S. economy in the future is China, a robust North American economy, which will be preserved by the USMCA, becomes critical.

CONCLUDING OBSERVATIONS

The Trump administration's broader trade policies (such as massive tariffs on imports from China and on most steel and aluminum imports regardless of source) will affect intra-North American trade as well as trade with other parts of the world, particularly if tariffs or quotas are imposed on imports of autos and auto parts from Europe and Asia, and particularly if the trade war with China continues or escalates. Mexico could benefit from a higher North American content requirement for auto production if some current Chinese production is shifted to Mexico. Still, if the major threat to the U.S. economy in the future is China, a robust North American economy, which will be preserved by the USMCA, becomes critical.

Given that the effective implementation of the USMCA will require close coordination among the United States, Mexico, and Canada for the indefinite future, it is too soon to tell if the personal attacks by Trump on Canadian Prime Minister Justin Trudeau will have a lasting negative effect on the United States' closest ally and largest trading partner. Similarly, Trump and López Obrador effectively began with a clean slate on December 1, 2018, sharing an opportunity to establish cordial relations that will facilitate the successful implementation of the USMCA—or the opposite.

ENDNOTES

1. North American Free Trade Agreement (NAFTA), U.S.-Can.-Mex., December 15, 1992, <https://www.nafta-sec-alena.org/Home/Texts-of-the-Agreement/North-American-Free-Trade-Agreement>.

2. *Agreement between the United States of America, the United Mexican States, and Canada Text (USMCA)*, November 30, 2018, <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>.

3. See Jenny Leonard, "Trump's Combative Side Poses Risk as Democrats Hold Key to USMCA," *Bloomberg Law News*, December 6, 2018, <https://www.bloomberg.com/news/articles/2018-12-06/trump-s-combative-side-poses-risk-as-democrats-hold-key-to-usmca>.

[combative-side-poses-risk-as-democrats-hold-key-to-usmca](https://www.bloomberg.com/news/articles/2018-12-06/trump-s-combative-side-poses-risk-as-democrats-hold-key-to-usmca).

4. See for example Jeffrey J. Schott, "For Mexico, Canada, and the United States, a Step Backward on Trade and Investment," Peterson Institute for International Economics, October 2, 2018, <https://piie.com/blogs/trade-investment-policy-watch/mexico-canada-and-united-states-step-backwards-trade-and>.

5. USMCA, chs. 7, 9, 11, 12, 21, 22, 25, 27, and 28.

6. USMCA, ch. 19.

7. Presidential Memorandum Regarding Withdrawal of the United States from the Trans-Pacific Partnership Negotiations and Agreement, January 23, 2017, <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-regarding-withdrawal-united-states-trans-pacific-partnership-negotiations-agreement/>.

8. Comprehensive and Progressive Trans-Pacific Partnership, Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam, March 8, 2018, <https://www.mfat.govt.nz/assets/CPTPP/Comprehensive-and-Progressive-Agreement-for-Trans-Pacific-Partnership-CPTPP-English.pdf>.

9. See David A. Gantz, C. Ryan Reetz, Guillermo Aguilar-Alvarez, and Jan Paulsson, "Labor Rights and Environmental Protection under NAFTA and Other U.S. Free Trade Agreements," *The University of Miami Inter-American Law Review* 42, no. 1 (Winter/Spring 2011): 297.

10. Gantz, Reetz, Aguilar-Alvarez, and Paulsson, "Labor Rights," 297.

11. See Harley Shaiken, "Improved Workers' Rights for Mexicans will Benefit Americans," *The New York Times*, January 30, 2017, <https://www.nytimes.com/roomfordebate/2017/01/30/new-terms-for-nafta-7/improved-workers-rights-for-mexicans-will-benefit-americans>.

12. USMCA, art. 23.9.

13. USMCA, art. 23.9, fn. 13.

14. USMCA, ch. 24.

15. *Agreement on Environmental Cooperation among the Governments of the United States of America, the United Mexican States, and Canada*, November

30, 2018, https://www.epa.gov/sites/production/files/2018-11/documents/us-mxca_eca_-_final_english.2.pdf.

16. USMCA, ch. 33.

17. U.S. Trade Representative (USTR), “Trump Administration Announces Intent to Negotiate Trade Agreements with Japan, the European Union and the United Kingdom,” October 2018, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/october/trump-administration-announces>.

18. USMCA, annex 3–B, sec. C (Dairy Pricing and Imports).

19. See USMCA, ch. 20, sec. D (country names).

20. See Office of Regulatory Policy Agricultural and Economic Policy Team, “U.S. Agricultural Exports: Key Destinations and Country Concentration Risk,” *FCA Economic Report*, September 29, 2015, <https://www.fca.gov/template-fca/download/EconomicReports/3%20U.S.AgriculturalExports-KeyDestinationsAndCountryConcentrationRisk.pdf>. This shows Canada first with \$21.8 billion and Mexico third with \$18.3 billion.

21. Caitlin Dewey, “How a Group of Florida Tomato Growers Could Help Derail NAFTA,” *The Washington Post*, October 16, 2017, https://www.washingtonpost.com/business/economy/how-a-group-of-florida-tomato-growers-could-help-derail-nafta/2017/10/16/e1ec5438-b27c-11e7-a908-a3470754bbb9_story.html?utm_term=.88330100e6bc.

22. See Mike Blanchfield, “Canada Retaliates Against U.S. Steel, Aluminum Exports, Announces Dollar-For-Dollar ‘Countermeasures,’” *Global News (Canada)*, May 31, 2018, <https://globalnews.ca/news/4245336/canada-retaliation-us-steel-aluminum-tariffs/> (up to \$16.6 billion worth); Ana Swanson and Jim Tankersley, “Mexico, Hitting Back, Imposes Tariffs on \$3 billion Worth of U.S. Goods,” *The New York Times*, June 5, 2018, <https://www.nytimes.com/2018/06/05/us/politics/trump-trade-canada-mexico-nafta.html>.

23. See David A. Gantz, “The Risks and Rewards of Renegotiating the North American Trade Relationship,” *Maryland Journal of International Law* 33 (2018): 127, 135.

24. USMCA, app. to annex 4–B, Product-Specific Rules of Origin for Automotive Goods.

25. “Study Points to Large Wage Gaps for Mexican Auto Workers,” *Mexico News Daily*, July 2, 2018, <https://mexiconewsdaily.com/news/study-points-large-wage-gaps-mexican-auto-workers/>.

26. See Rosella Brevetti, “Tough NAFTA Auto Rules Will Help Spur Investment in Mexico (1),” *International Trade Daily* (BBNA), October 12, 2018, http://news.bna.com/itIn/display/batch_print_display.adp?searchid=31860977 (quoting Mexican trade negotiator Jesus Seade).

27. See Sharay Angulo, “Most Mexican Auto Exports Can Meet New NAFTA Rules, Says Minister,” *Reuters Business News*, August 27, 2018, <https://www.reuters.com/article/us-trade-nafta-mexico-autos/most-mexican-auto-exports-can-meet-new-nafta-rules-says-minister-idUSKCN1LC2HC> (quoting Mexican Economy Minister Ildefonso Guajardo).

28. USMCA, annex 2–C, para. 5.

29. USMCA, U.S.–Canada 232 side letter, U.S.–Mexico 232 side letter, <https://www.international.gc.ca/trade-commerce/assets/pdfs/agreements-accords/cusma-aceum/letter-232autos.pdf>.

30. See NAFTA, annex A–300; appendix to annex 4–B.

31. Australia refused to accept ISDS in that agreement but did so in the TPP and the CPTPP fifteen years later.

32. U.S. Department of State, “United States Bilateral Investment Treaties,” accessed December 3, 2018, <https://www.state.gov/e/eb/ifa/bit/117402.htm>.

33. See “Brady–Lighthizer ISDS Exchange,” *International Economic Law and Policy Blog*, March 21, 2018, <https://worldtradelaw.typepad.com/ielpblog/2018/03/brady-lighthizer-isds-exchange.html>.

34. USMCA, annex 14–C.

35. USCMA, annex 14–D.

36. USCMA, annex 14–D.

37. USMCA, annex 14–E, para 6(b).

38. See USMCA, annexes 14–D and 14–E (not applicable to Canada).

39. CPTPP, ch. 9; but see CPTPP text, annex, para. 2 (suspending certain investment related provisions of the TPP).

40. NAFTA, ch. 6.

41. See Diana Villiers Negroponce, “Mexico’s Energy Reforms Become Law,” Brookings, August 14, 2018, <https://www.brookings.edu/articles/mexicos-energy-reforms-become-law/>.

42. Clare Ribando Selke, Michael Ratner, M. Angeles Villarreal, and Phillip Brown, “Mexico’s Oil and Gas Sector: Background, Reform Efforts, and Implications for the United States,” *Congressional Research Service*, September 28, 2015, <https://fas.org/sgp/crs/row/R43313.pdf>.

43. USMCA, arts. 8, 32.11; TPP, Annex I–Mexico–17/27.

44. USMCA, art. 34.7.

45. TPP, art. 18.51 (deleted from the Comprehensive and Progressive TPP concluded by the remaining eleven TPP Parties in 2018).

46. USMCA, ch. 20, sec. F, art. 20.F.14.

47. USMCA, ch. 20, subsections B (agricultural chemicals) and C (pharmaceutical products).

48. USMCA, art. 32.10.

49. “Top US Import Sources of Steel, Aluminum,” VOA News, March 1, 2018, <https://www.voanews.com/a/top-us-import-sources-steel-aluminum/4277212.html>.

50. NAFTA, ch. 19; USMCA, ch.10, sec. D.

51. United States–Canada Free Trade Agreement, January 2, 1988; see Jesse McLean, “Will Chapter 19 be a Deal–Breaker for Canada in NAFTA Talks?” *The Star (Toronto)*, September 2, 2018, <https://www.thestar.com/news/canada/2018/09/02/will-chapter-19-be-a-deal-breaker-for-canada-in-nafta-talks.html> (quoting USCFTA chief Canadian negotiator Gordon Ritchie).

52. USMCA, art. 32.6; NAFTA, annex 2106 (incorporating relevant provisions of the U.S.–Canada FTA).

53. Alan Z. Hertz, “The NAFTA Cultural Industries Exception,” *Audi Alteram Partem* (blog), October 7, 2010, <http://www.allenzhertz.com/2010/10/cultural-industries-exception.html>.

54. See Gantz, “Risk and Rewards,” 135.

55. See NAFTA, ch. 20; USMCA ch. 31.

56. *Understanding on Rules and*

Procedures Governing the Settlement of Disputes, Annex 2 of the WTO Agreement, April 15, 1994; see Kirtika Suneja, “US Blocking Appointment to Key WTO Body, Trump May Soon be the Only Winner in Any Trade Dispute,” *The Economic Times*, March 6, 2018, <https://economictimes.indiatimes.com/news/economy/foreign-trade/trade-wars-us-blocking-appointment-of-members-of-wtos-appellate-body/articleshow/63177200.cms>.

57. Eric Martin, Josh Wingrove, and Andrew Mayeda, “U.S. Demands on NAFTA Said to Risk Scuttling Trade Talks,” *International Trade Report* (BBNA), October 5, 2017.

58. See Jean Heilman Grier, “USMCA–Modernized NAFTA: Government Procurement,” *Perspectives on Trade*, October 5, 2018, <https://trade.djaghe.com/?p=5174>; USMCA, ch. 13.

See more Baker Institute Reports at: www.bakerinstitute.org/baker-reports

This publication was written by a researcher (or researchers) who participated in a Baker Institute project. Wherever feasible, this research is reviewed by outside experts before it is released. However, the views expressed herein are those of the individual author(s), and do not necessarily represent the views of Rice University’s Baker Institute for Public Policy.

© 2018 Rice University’s Baker Institute for Public Policy

This material may be quoted or reproduced without prior permission, provided appropriate credit is given to the author and Rice University’s Baker Institute for Public Policy.

Cite as:

Gantz, David A. 2018. *The United States–Mexico–Canada Agreement: Overview and Analysis*. Baker Institute Report no.12.11.18. Rice University’s Baker Institute for Public Policy, Houston, Texas.

AUTHOR

David A. Gantz, J.D., J.S.M., is the Will Clayton Fellow in Trade and International Economics at the [Mexico Center](#) whose work focuses on international trade and economics. He is also the Samuel M. Fegtly Professor of Law at the University of Arizona’s James E. Rogers College of Law and director emeritus of the international trade and business law program. Gantz has written extensively on World Trade Organization and NAFTA trade law and dispute resolution issues, as well as a range of other international trade matters.

méxico center

Rice University’s Baker Institute for Public Policy